

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****CRIMINAL APPEAL No. 292 of 1996****For Approval and Signature:****HONOURABLE MR.JUSTICE AKIL KURESHI**

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1 Whether Reporters of Local Papers may be allowed  
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy  
of the judgment ?

4 Whether this case involves a substantial question  
of law as to the interpretation of the  
constitution of India, 1950 or any order made  
thereunder ?

5 Whether it is to be circulated to the civil judge  
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**BALWANTSINGH DEVISINGH NAYAK & 1 - Appellant(s)****Versus****STTE OF GUJARAT - Opponent(s)**

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**Appearance :**

MR AB MUNSHI for Appellant(s) : 1, None for Appellant(s) : None for  
Petitioner No(s).: for Appellant(s) : 2,  
MR MR MENGDEY, APP for Opponent(s) : 1,

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**CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI****Date : 20/11/2007****ORAL JUDGMENT**

1.This appeal has been filed by the original  
accused challenging the judgement and order  
dated 14.3.1996 passed by the Special Judge,

Panchmahal, Godhra in Sessions Case No.41/1995(Atrocity).

2. Against the present accused, the complaint came to be filed on 10.11.1994 by one Pramjibhai Badiabhai alleging inter-alia that on 9.11.1994 at about 7 0' clock in the evening when he was sitting in his house with his family members, the appellants came there and abused him and told him that though he might have succeeded in the land dispute before the Court, he will nevertheless have to leave the land or else he would be killed. They also abused him saying that he belongs to Adivasi community and that he has gone out of control receiving State largess.
3. Pursuant to the complaint lodged, investigation was carried out. The police filed the charge-sheet before the Competent Court. The trial was conducted during which prosecution examined four witnesses. The complainant Pramjibhai Badiabhai was examined at Exh.5 as PW1. One Samsubhai Havsingbhai was examined at Exh.6 as PW2. He is nephew of the complainant and claimed to be present when the incident took place. IO was examined at Exh.7 as PW3. One Vajesinh Sayababhai was examined at Exh.10 as PW4.
4. On the basis of evidence brought on record, learned trial Judge was of the opinion that though offence punishable under Section 504 was

not established, the accused were guilty of having committed offences punishable under Sections 3(1)(5) and 3(1)(10) of the Schedule Castes and Schedule Tribes(Prevention of Atrocities) Act (here-in-after referred to as "the Atrocities Act"). Learned Judge was also of the opinion that the accused had committed offences punishable under Section 506(2) of the Indian Penal Code. Under the circumstances, he was pleased to award a sentence of simple imprisonment of one month for having committed offence punishable under Section 506(2) of the Indian Penal Code and for a period of six months each for offences punishable under Sections 3(1)(5) and 3(1)(10) of the Atrocities Act. The sentences were to run concurrently.

5. In the complaint as well as oral deposition, the foundation of the prosecution case has been that the accused went to the house of the complainant on 9.11.1994 in the evening time and threatened and abused them since the complainant had succeeded in a Court case pertaining to some agricultural land.

6. On the other hand, the defence put forth through cross examination of the witnesses was that in fact in the land dispute, the complainant had not succeeded and at all stages the accused had succeeded before the Courts. Therefore, the accused were being falsely involved by making

false allegations.

7. The complainant in his deposition stated inter-alia that he had land dispute with the accused about which the case was going on in Jhalod Court in which he succeeded. On the date of incident in the evening at about 7 0' Clock when he was sitting with other family members, the accused came there and told him that though he might have succeeded in the land case, they (the accused) will not allow him to remain there. He must leave the house and the land or else they will kill him.

7.1 In his cross examination, he denied that there was any injunction against his entering the disputed land namely Survey no. 293 of Pethapur. Though he denied that in the Jhalod Court the decision was against him, he agreed that before the District Court at Godhra, he had preferred Appeal No.115/1989. He pleaded ignorance about the outcome of the appeal and could not state whether same has been rejected. In his cross examination, he further stated that in the appeal he had engaged an advocate one Mr. Christian.

8. PW2- Samsubhai Havsingbhai in his deposition at exh.6 substantially supported the say of the complainant insofar as the alleged incident is concerned. There were however, certain minor

contradictions regarding the spot where the complainant, the deponent and other family members were sitting as well as whether they had lit the bonfire or not. He however, had not stated anything about the land dispute.

9.The IO PW-3 in his deposition at exh.7 stated that he had recorded statements of the witnesses.

9.1 In his cross examination, he agreed that during his investigation, the complainant had not produced any documents to show that he had succeeded in the Court case nor supplied any such documents to him. The complainant had also not produced any documents pertaining to the land in question such as Panipatrak etc. Significantly, he stated that the complainant had produced a copy of the judgment rendered in Appeal in which he had lost.

10.PW4 Vajesinh Sayababhai whose deposition was recorded at exh.10 was examined only for the purpose of establishing filing of the complaint which the witnesses had recorded.

11.Though there are certain contradictions in the versions put forth by PW1 and PW2 regarding the exact nature of incidence, the exact words used by the accused and the spot where the complainant and his family members were sitting

when the accused approached them, such contradictions per-se may not have perhaps shaken the foundation of the prosecution version. However, in this case, I find that very foundation of the prosecution case namely that of the complainant having succeeded in the Court case of the disputed land, is falsified.

12.As noted earlier, the complainant in his deposition though denied that he had lost the case before the Jhalod Court, he agreed that he had filed appeal before the District Court at Godhra. This would show that the complainant had not succeeded at Jhalod Court and was therefore, forced to file appeal against the verdict of the Court which was adverse to him. In his cross examination, he had further stated that in appeal, he had engaged one advocate by name Christian. Thus it remains an admitted position that the complainant had not succeeded before the Jhalod Court with respect to land in question. The accused had produced certain documents before the trial Court along with list exh.11. These documents were given exh. Nos. 12 to 14. One of the document was a copy of the judgment of the District Court rendered on 30.10.1994. Upon perusal of the judgment, two things become clear. Firstly, the complainant was one of the appellants in Civil Misc. Appeal No. 115/89 filed before the Godhra Court and secondly, the appeal came to be dismissed by the

Court by judgement dated 30.10.1994. It would thus become clear that all through out the complainant had lost the case regarding the land in question. His assertion therefore, that the accused had abused and threatened him to dispossess him saying that though he might have won the case before the Court, he would not be allowed to remain on the land, is totally false. In fact, the complaint came to be filed on 10.11.1994 i.e. shortly after Godhra Court rejected the appeal of the complainant. Thus very foundation of the allegations contained in the complaint and sought to be proved through oral evidence is shaky.

13. Under the circumstances, I find that learned trial Judge committed error in accepting the oral deposition of PW1 and PW2. Going through judgment, it would appear that this important aspect has not been taken into account at all. The significance of admission of the complainant(PW1) that he is the one who had preferred the appeal before the Godhra Court has been totally lost sight of.

14. Under the circumstances, I have no hesitation in holding that charge against the appellants stands not proved. Under the circumstances, the appeal succeeds. The impugned order dated 14.3.1996 is quashed. The appellants original accused are acquitted. Fine if already paid

shall be refunded to the appellants. Bail bond stands cancelled.

**(Akil Kureshi,J.)**

(raghu)